

**THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

IN RE: Friends of the Earth and Sierra Club,)
Complainant/Petitioner vs. South)
Carolina Electric & Gas Company,)
Defendant/Respondent)

IN RE: Request of the South Carolina Office of)
Regulatory Staff for Rate Relief to)
SCE&G Rates Pursuant to S.C. Code)
Ann. § 58-27-920)

IN RE: Joint Application and Petition of South)
Carolina Electric & Gas Company and)
Dominion Energy, Incorporated for)
Review and Approval of a Proposed)
Business Combination between)
SCANA Corporation and Dominion)
Energy, Incorporated, as May Be)
Required, and for a Prudency)
Determination Regarding the)
Abandonment of the V.C. Summer)
Units 2 & 3 Project and Associated)
Customer Benefits and Cost Recovery)
Plans)

**SCE&G’S RESPONSE IN
OPPOSITION TO SCCCL
AND SACE’S MOTION TO
STRIKE SCE&G’S NOTICE
OF CHANGE IN SECURITY
RATING**

South Carolina Electric & Gas Company (“SCE&G” or the “Company”), pursuant to 10 S.C. Code Ann. Regs. 103-825(A) (2012), herein responds in opposition to the Motion to Strike SCE&G’s Notice of Change in Security Rating (“Motion”) of the South Carolina Coastal Conservation League (“SCCCL”) and the Southern Alliance for Clean Energy (“SACE”), which was filed with the Public Service Commission of South Carolina (“Commission”) on August 22, 2018 in the above-captioned matters. For the reasons set forth below, SCE&G respectfully requests that the Commission deny the Motion.

ARGUMENT

I. The information contained in SCE&G's Notice of Change in Security Rating is specifically required by Order No. 1992-931.

On August 10, 2018, SCE&G filed with the Commission a notice ("Notice"), as required by Order No. 92-931, dated November 13, 1992, in Docket No. 89-230-E/G, that Fitch Ratings ("Fitch") and S&P Global Ratings ("S&P") had taken negative credit actions against SCANA Corporation ("SCANA") and SCE&G. Through its Motion, SCCCL and SACE object to SCE&G's filing of the Notice in the above-captioned dockets asserting that Order No. 92-931 does not justify nor require the filing, and that the Notice is "a gratuitous attempt by SCE&G to influence the Commission's deliberations regarding cost recovery for the abandoned V.C. Summer units, as well as the proposed Dominion-SCANA merger." The assertions made by SCCCL and SACE, however, are demonstrably false, and should be summarily rejected.

As described in Order No. 92-931, the Commission Staff, in Docket No. 89-230-E/G, made certain "recommendations for additional reporting requirements for SCE&G and SCANA's regulated affiliated companies and for substantive actions relating to affiliated transactions, including the transfer of real property." Order No. 92-931 at 2. Following oral argument and the submission of pleadings and stipulations in this matter, the Commission issued Order No. 92-931, adopting the Commission Staff's "Final Recommendations and Reporting Requirements" with certain modifications. Among other things, the order requires SCE&G to:

6. A) File the bond rating, common stock rating, and preferred stock rating of SCANA Corporation, SCE&G, and any other regulated subsidiary of SCANA Corporation at the end of the latest calendar year. **File all available ratings and notifications of any change in a security rating within 15 days or as soon as possible. The notification will include the news release or other information for the rating agency setting forth the reason for the change.**

Order No. 92-931 at App. pp.7-8 (emphasis added). Accordingly, Order No. 92-931 specifically requires SCE&G not only to notify the Commission of the change in its and SCANA's ratings, but also to include in the notification the news release and other information setting forth the reason the rating agencies made the change.

For example, Fitch explains in its August 8, 2018 press release that a key driver of the change in SCE&G's rating from BBB- to BB+ and SCANA's ratings from BB+ to BB was:

the sharp deterioration in the legislative and regulatory environment in South Carolina since abandonment of the new nuclear project in July 201[7]. In addition to HB4375's legislatively mandated 14.8% rate cut, changes to definitions and statutory components of the state's utility regulation are likely to result in diminished regulatory support, in Fitch's opinion. Among such items are an expansive definition of prudence, removal of the mandate that the Office or Regulatory Staff (ORS) must consider preservation of a utility's financial integrity, and granting the ORS subpoena powers. A second bill (SB954) passed by the Legislature orders the PSC to deviate from the statutory six-month limit on rate proceedings and prohibits an order in the multi-docketed proceeding before Nov. 1, 2018.

Fitch further states that the reason it was maintaining its "Watch Evolving" status for SCE&G and SCANA ratings included "the potential positive implications of the proposed merger between [SCANA] and [Dominion Energy] and that, "[i]f the merger were to be consummated as originally envisioned, Fitch expects a stabilization of [SCANA's] and SCE&G's credit metrics and would consider an upgrade."

Similarly, S&P explains its downgrade of SCANA and SCE&G from BBB to BBB- and the reason why it was maintaining their rating status as "Watch Negative" as follows:

The rating actions follow the Aug. 6, 2018, federal court denial of SCE&G's request for a preliminary injunction to halt a temporary 15% rate reduction tied to V.C. Summer cost recovery. On June 28, 2018, the South Carolina General Assembly passed a law requiring the PSC to order SCE&G to lower electric rates associated with the cancelled V.C. Summer nuclear construction project by 15%, equivalent to a roughly \$31 million per month rate reduction at the utility. The bill retroactively reduces rates from April

1, 2018, until the PSC issues a ruling regarding final cost recovery regarding the cancelled construction of the nuclear units.

Despite the protestations of SCCCL and SACE to the contrary, these and similar statements by Fitch and S&P were included in the news releases from the two agencies and “set[] forth the reason for the change” in the companies’ rating statuses. Thus, it was not only appropriate, but in fact required by Order No. 92-931, for SCE&G to notify the Commission of the new ratings and the reasons expressed by the rating agencies for the changes. SCCCL and SACE’s Motion therefore is without merit and should be denied.

II. SCE&G was required to file the notice in Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E pursuant to S.C. Code Ann. § 58-3-260.

SCCCL and SACE also complain that, while Order No. 92-931 requires SCE&G to notify the Commission of any change in a security rating in Docket No. 89-230-E/G, “[t]hat docket is separate from and entirely unrelated to these consolidated dockets, which means filing the notification in these dockets is entirely inappropriate.” Again, SCCCL and SACE are mistaken.

As explained previously, Order No. 92-931 requires SCE&G to notify the Commission of any rating changes and to file “the news release or other information for the rating agency setting forth the reason for the change.” Rating changes are routinely filed in Docket No. 89-230-E/G as the docket that originated this requirement; however, the news releases issued by Fitch and S&P both refer to issues under consideration by the Commission in the above-captioned consolidated dockets. Specifically, Fitch references the proposed merger between SCANA and Dominion Energy and how the decisions related to cost recovery of investments made in the now abandoned nuclear plants may affect future rating actions. S&P also references the pending dockets and states that the rate reduction required by the legislature “is temporary until the PSC rules on SCE&G’s permanent rate recovery of the abandoned project.”

Because the rate reductions and merger issues being considered in the proceedings captioned above are specifically referenced in the announcements of downgrades by Fitch and S&P, SCE&G was required to file these documents, not only in Docket No. 89-230-E/G as required by Order No. 92-931, but also in the above-captioned dockets so as to avoid engaging in an impermissible *ex parte* communication. In this regard, Section 58-3-260(B) of the South Carolina Code of Laws provides:

Except as otherwise provided herein or unless required for the disposition of ex parte matters specifically authorized by law, a commissioner, hearing officer, or commission employee shall not communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication, **nor shall any person communicate, directly or indirectly, regarding any issue that is an issue in any proceeding or can reasonably be expected to become an issue in any proceeding with any commissioner, hearing officer, or commission employee without notice and opportunity for all parties to participate in the communication.**

(Emphasis added). The issues addressed in the Fitch and S&P news releases and the reasons stated for downgrading SCE&G and SCANA's credit ratings are issues pending in the above-captioned dockets or could "reasonably be expected to become an issue." Therefore, SCE&G was required by law to file the Notice not only in Docket No. 89-230-E/G but also in Docket Nos. 2017-207-E, 2017-305-E, and 2017-370-E in order to provide all parties to these proceedings with "notice and opportunity to participate in the communication."¹ SCCCL and SACE's criticism of SCE&G's filings as being "gratuitous" and "not relevant to any issue in these dockets" therefore is simply wrong, ignores applicable law, and merely seeks to avert attention away from the potential great

¹ We note that SCCCL and SACE do not argue that the Notice or the attached rating downgrades are inaccurate. They apparently seek to have the Commission and the parties simply ignore the adverse impact to SCE&G's credit resulting from negative, retroactive, and punitive statutory and regulatory actions reducing its rates. Unfortunately, while SCCCL and SACE may wish to ignore the adverse impact to SCE&G, the investment community is fully attentive to these proceedings and the impact the decisions to be made therein will have on SCE&G's ability to charge fair and reasonable rates in order meet its debt and service obligations and earn a fair and reasonable return on invested capital.

harm to SCE&G and its customers of deteriorating credit metrics. Consequently, their Motion should be denied.

CONCLUSION

For the reasons set forth herein, SCE&G respectfully requests that the Commission deny SCCCL and SACE's Motion to Strike and grant such other and further relief as is just and proper.

Respectfully submitted,

s/Mitchell Willoughby
 Mitchell Willoughby
 Willoughby & Hoefer, P.A.
 Post Office Box 8416
 Columbia, SC 29202
 (803) 252-3300
 mwilloughby@willoughbyhoefer.com

K. Chad Burgess, Esquire
 Matthew Gissendanner, Esquire
 Mail Code C222
 220 Operation Way
 Cayce, SC 29033-3701
 Telephone: 803-217-8141
 Facsimile: 803-217-7931
 chad.burgess@scanna.com
 matthew.gissendanner@scana.com

Belton T. Zeigler
 Womble Bond Dickinson (US) LLP
 1221 Main Street
 Suite 1600
 Columbia, SC 29201
 (803) 454-7720
 belton.zeigler@wbd-us.com

*Attorneys for South Carolina Electric & Gas
 Company*

Columbia, South Carolina
 September 4, 2018